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10/715,596	11/19/2003	John M. Monk	10030705-1	6456

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AGILENT TECHNOLOGIES, INC.  
Legal Department, DL429  
Intellectual Property Administration  
P.O. Box 7599  
Loveland, CO 80537-0599

EXAMINER
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MOUZON, LAJUANIA N

ART UNIT	PAPER NUMBER
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2109

MAIL DATE	DELIVERY MODE
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05/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/715,596

Applicant(s)

MONK ET AL.

Examiner

La Juania N. Mouzon

Art Unit

2109

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/19/2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 11/19/2003 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.
2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 43. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of

Art Unit: 2109

an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The disclosure is objected to because of the following informalities: need to insert serial number for the patent application referenced (Pg. 9 ¶1).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-16 are rejected because it is unclear whether the applicant is claiming an apparatus, system, or software. The claims are claiming an apparatus comprising a system but all the components in the system are software. None of the objects are limited to exclusively hardware.

7. The term "interfaced" in claim 1, when used as "...perform the interfaced heterogeneous measurements for a test...", is a relative term which renders the claim indefinite. The term "interfaced" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the

Art Unit: 2109

art would not be reasonably appraised of the scope of the invention. The term used the first time for communicating with the physical agents is clear, but it is unclear how the applicant is defining interfaced the second time when communicating with measurements.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-16 are rejected because it is unclear whether the applicant is claiming an apparatus, system, or software. One statutory class of invention needs to be elected. The claims are claiming an apparatus comprising a system but all the components in the system are software. None of the objects are limited to exclusively hardware.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (US 6,138,122).

12. In regards to claim 1 Smith et al. teach, an apparatus comprising: a distributed testing system comprising a logical agent **(Col. 3 line(s) 19-22, teaches logical agents (software agent).)**,

a. a server communicating with the logical agent **(Col. 2 line(s) 62-63, teaches a server communicating with logical agents.)**

b. and a graphical user interface (GUI) communicating with the server **(Col. 3 line(s) 15-18, teaches the information can be displayed using a GUI while communicating with the server.)**,

c. the distributed testing system being extensible to, without technical intervention, interface with physical agents and heterogeneous measurements so that the interfaced physical agents perform the interfaced heterogeneous measurements **(Col. 3 line(s) 19-22, teaches the distributed system being able to be added on to without technical intervention.)**

for a test in accordance with control by an end user via the GUI **(Col. 3 line(s) 43-46, teaches that the test are issued by the user via the GUI.)**.

13. In regards to claim 3 Smith et al. discloses, means for interfacing the physical agents and the heterogeneous measurements to the distributed testing system **(Col. 2 line(s) 60-67 – Col. 3 line(s) 1-22, teaches, means for communication from the physical agents and measurements.)**.

Art Unit: 2109

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 2, 4-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 6,138,122), and further in view of Forman et al. (US 6,519,638).

Figure 2 of Smith et al. is reproduced below.

17. In regards to claim 2 Smith et al. do not teach, a framework interfacing the physical agents and the heterogeneous measurements to the distributed testing system.

18. In the same field of endeavor Forman et al. teach a framework communicating with the system parts and measurements in a distributed systems (**Col. 6 line(s) 4-15**).

19. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. modeling of internet services with

Art Unit: 2109

Forman et al. teaching as discussed above to allow for multiple frameworks for collecting system data that provides increased flexibility for collecting different types of system data and a more consistent interface for facilitating system data analysis.

20. In regards to claims 4 and 10 Smith et al. do not teach, wherein the framework comprises: a GUI integration framework interfacing the GUI with GUI plug-ins for the physical agents, and interfacing the GUI with GUI plug-ins for the heterogeneous measurements; a server integration framework interfacing the server with server plug-ins for the physical agents, and interfacing the server with server plug-ins for the heterogeneous measurements; and an agent integration framework interfacing the logical agent with agent plug-ins for the physical agents.

21. In the same field of endeavor Forman et al. teach a data collector implemented through an object-oriented framework that includes probe classes and subclasses (plug-ins) that actually does the collecting of data while storing it in a common repository and communicating to the appropriate parts in the system (**Col. 6 line(s) 4-59**).

22. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. modeling of internet services with Forman et al. teaching as discussed above to allow for multiple frameworks for collecting system data that provides increased flexibility for collecting different types of system data and a more consistent interface for facilitating system data analysis.



Art Unit: 2109

23. In regards to claims 5 and 12 Smith do not teach, wherein the GUI integration framework comprises an object-oriented class hierarchy for interfacing the GUI with the GUI plug-ins; and the server integration framework comprises an object-oriented class hierarchy for interfacing the server with the server plug-ins.

24. In the same field of endeavor Forman et al. teach a data collector implemented through an object-oriented framework that includes probe classes and subclasses (plug-ins) that actually does the collecting of data while storing it in a common repository and communicating to the appropriate parts in the system (**Col. 6 line(s) 4-59**).

25. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. modeling of internet services with Forman et al. teaching as discussed above to allow for multiple frameworks for collecting system data that provides increased flexibility for collecting different types of system data and a more consistent interface for facilitating system data analysis.

26. In regards to claims 6 and 13 Smith et al. discloses, wherein the class hierarchy of the GUI integration framework comprises: GUI measurement objects for configuring and controlling measurements, the GUI measurement objects being derivable to create new measurements (**col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches measurement**

Art Unit: 2109

objects for configuring and controlling measurements that are derivable to create new measurements);

d. GUI test objects for adding and deleting measurements to/from tests, the GUI test objects being derivable to create new tests (col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches adding new measurements. It would have been obvious that if you can add new measurements that you can also delete existing measurements.);

e. and a GUI test manager object for creating and deleting tests on the GUI, the class hierarchy thereby being arranged with the GUI test manager object above the GUI test objects, and the GUI test objects being above the GUI measurement objects (Fig. 2 and col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches creating new test on the class hierarchy.).

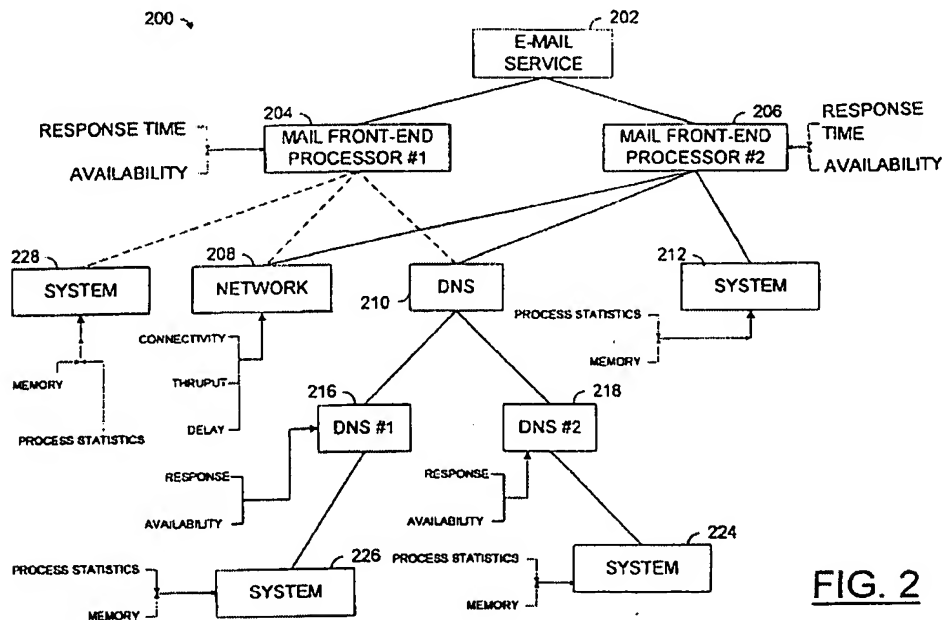


FIG. 2

Art Unit: 2109

27. In regards to claims 7 and 14 Smith et al. discloses, wherein the class hierarchy of the server integration framework comprises: server measurement objects for configuring and controlling measurements, the server measurement objects being derivable to create new measurements (**col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches measurement objects for configuring and controlling measurements that are derivable to create new measurements**);

f. server test objects for adding and deleting measurements to/from tests, the server test objects being derivable to create new tests (**col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches adding new measurements. It would have been obvious that if you can add new measurements that you can also delete existing measurements.**);

g. and a server test manager object for creating and deleting tests on the server, the class hierarchy thereby being arranged with the server test manager object above the server test objects, and the server test objects being above the server measurement objects (**Fig. 2, as shown on pg. 9, and col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches creating new test on the class hierarchy.**).

28. In regards to claims 8 and 15 Smith et al. discloses,

h. wherein the class hierarchy of the GUI integration framework comprises:

i. GUI measurement objects for configuring and controlling measurements, the GUI measurement objects being derivable to create new measurements (**col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches**

**measurement objects for configuring and controlling measurements that are derivable to create new measurements);**

ii. GUI test objects for adding and deleting measurements to/from tests, the GUI test objects being derivable to create new tests (**col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches adding new measurements. It would have been obvious that if you can add new measurements that you can also delete existing measurements.);**

iii. and a GUI test manager object for creating and deleting tests on the GUI, the class hierarchy thereby being arranged with the GUI test manager object above the GUI test objects, and the GUI test objects being above the GUI measurement objects (**Fig. 2 and col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches creating new test on the class hierarchy.)**

i. wherein the class hierarchy of the server integration framework comprises:

iv. server measurement objects for configuring and controlling measurements, the server measurement objects being derivable to create new measurements (**col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches measurement objects for configuring and controlling measurements that are derivable to create new measurements);**

v. server test objects for adding and deleting measurements to/from tests, the server test objects being derivable to create new tests (**col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches adding new measurements. It**

**would have been obvious that if you can add new measurements that you can also delete existing measurements.);**

vi. and a server test manager object for creating and deleting tests on the server, the class hierarchy thereby being arranged with the server test manager object above the server test objects, and the server test objects being above the server measurement objects **(Fig. 2, as shown on pg. 9, and col. 5 line(s) 59-67 – col. 6 line(s) 1-7, teaches creating new test on the class hierarchy.)**.

29. In regards to claim 9 Smith et al discloses, an apparatus comprising:

j. a logical agent **(Col. 3 line(s) 19-22, teaches logical agents (software agent).);**

k. a server communicating with the logical agent **(Col. 2 line(s) 62-63, teaches a server communicating with logical agents.);**

l. a graphical user interface (GUI) communicating with the server **(Col. 3 line(s) 15-18, teaches the information can be displayed using a GUI while communicating with the server.);**

30. Smith et al. do not teach and a framework interfacing, without technical intervention, physical agents to the logical agent, the server and the GUI via plug-ins, and interfacing, without technical intervention, a plurality of measurements to the server and the GUI via plug-ins, the interfaced physical agents thereby performing the

Art Unit: 2109

interfaced heterogeneous measurement for a test in accordance with control by an end user via the GUI.

31. In the same field of endeavor Forman et al. teach a framework communicating with the different parts of the system without technical interventions while receiving and executing the measurements from the appropriate objects via a control from the GUI controlled by a end user (**Col. 6 line(s) 4-59**).

32. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. modeling of internet services with Forman et al. teaching as discussed above to allow for multiple frameworks for collecting system data that provides increased flexibility for collecting different types of system data and a more consistent interface for facilitating system data analysis.

33. In regards to claim 11 Smith et al. discloses, an apparatus comprising:

- m. a logical agent (**Col. 3 line(s) 19-22, teaches logical agents (software agent).;**
- n. a server communicating with the logical agent (**Col. 2 line(s) 62-63, teaches a server communicating with logical agents.);**
- o. a graphical user interface (GUI) communicating with the server (**Col. 3 line(s) 15-18, teaches the information can be displayed using a GUI while communicating with the server.);**

Art Unit: 2109

34. Smith et al. do not teach, a GUI integration framework interfacing the GUI with GUI plug-ins for the physical agents, and interfacing the GUI with GUI plug-ins for the heterogeneous measurements; a server integration framework interfacing the server with server plug-ins for the physical agents, and interfacing the server with server plug-ins for the heterogeneous measurements; and an agent integration framework interfacing the logical agent with agent plug-ins for the physical agents.

35. In the same field of endeavor Forman et al. teach a data collector implemented through an object-oriented framework that includes probe classes and subclasses (plug-ins) that actually does the collecting of data while storing it in a common repository and communicating to the appropriate parts in the system (**Col. 6 line(s) 4-59**).

36. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. modeling of internet services with Forman et al. teaching as discussed above to allow for multiple frameworks for collecting system data that provides increased flexibility for collecting different types of system data and a more consistent interface for facilitating system data analysis.

37. In regards to claim 16 Smith et al discloses, an apparatus comprising:

- p. a logical agent (**Col. 3 line(s) 19-22, teaches logical agents (software agent).**);

Art Unit: 2109

q. a server communicating with the logical agent (**Col. 2 line(s) 62-63, teaches a server communicating with logical agents.**);

r. a graphical user interface (GUI) communicating with the server (**Col. 3 line(s) 15-18, teaches the information can be displayed using a GUI while communicating with the server.**);

38. Smith et al. do not teach means for interfacing the GUI with GUI plug-ins for physical agents, and for interfacing the GUI with GUI plug-ins for heterogeneous measurements; means for interfacing the server with server plug-ins for the physical agents, and for interfacing the server with server plug-ins for the heterogeneous measurements; and means for interfacing the logical agent with agent plug-ins for the physical agents, the physical agents thereby performing the heterogeneous measurements for a test in accordance with control by an end user via the GUI.

39. In the same field of endeavor Forman et al. teach a means for a data collector implemented through an object-oriented framework that includes probe classes and subclasses (plug-ins) that actually does the collecting of data while storing it in a common repository and communicating to the appropriate parts in the system (**Col. 6 line(s) 4-59**).

40. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. modeling of internet services with



Art Unit: 2109

Forman et al. teaching as discussed above to allow for multiple frameworks for collecting system data that provides increased flexibility for collecting different types of system data and a more consistent interface for facilitating system data analysis.

### ***Conclusion***

41. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Glanzer et al. block oriented control system (US 6,424,872).

42. Any inquiry concerning this communication or earlier communications from the examiner should be directed to La Juania N. Mouzon whose telephone number is 571-270-3045. The examiner can normally be reached on Monday - Friday 8:00-5:00.

43. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Assouad can be reached on 571-272-2210. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2109

44. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LNМ

A handwritten signature in black ink, appearing to read 'Patrick Assouad', with a stylized flourish at the end.

**PATRICK ASSOUD  
SUPERVISORY PATENT EXAMINER**